

Farm Credit Administration

§ 625.26

(see §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

§ 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application. Unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed, the presiding officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the EAJA.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 625.25 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

§ 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.25 of this part.

§ 625.24 Comments by other parties.

Any party to a proceeding other than the applicant and FCA counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines

that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 625.25 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 625.26 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary

§ 625.27

adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 625.27 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§ 622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

§ 625.28 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 625.29 Payment of award.

(a) An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

PART 626—NONDISCRIMINATION IN LENDING

Sec.

626.6000 Definitions.

626.6005 Nondiscrimination in lending and other services.

626.6010 Nondiscrimination in applications.

626.6015 Nondiscriminatory appraisal.

626.6020 Nondiscriminatory advertising.

12 CFR Ch. VI (1-1-04 Edition)

626.6025 Equal housing lender poster.

626.6030 Complaints.

AUTHORITY: Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

SOURCE: Subpart E of part 613 added at 37 FR 11421, June 7, 1972, and 57 FR 13637, Apr. 17, 1992. Redesignated as part 626 at 62 FR 4441, Jan. 30, 1997.

§ 626.6000 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Applicant* means any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section